

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BLUEFORT PARTNERS,

Plaintiff,

v.

NO. 1:97CV200-S-D

JACKIE W. SHERRILL,

Defendant.

OPINION

On February 6, 1992, the United States District Court for the Southern District of Texas entered judgment against defendant after he defaulted on a promissory note. That judgment included an award of attorney's fees. When defendant allegedly failed to satisfy the judgment, plaintiff instituted the instant garnishment action; defendant denied plaintiff's allegations and asserted a defense of accord and satisfaction.

This cause is presently before the court on plaintiff's motion for summary judgment. Specifically, plaintiff states that defendant's "assertion of oral accord and satisfaction as his only defense to...recover[y] [of] the deficiency remaining on the judgment is clearly insufficient as a matter of law." Plaintiff maintains that defendant's employer, Mississippi State University, has already paid over the sums owed under the judgment pursuant to the writ, excepting any attorney's fees incurred by plaintiff in this proceeding. In response, defendant does not oppose entry of an order sustaining the motion as it relates to his liability for failure to satisfy the underlying judgment, though he does dispute the issue of attorney's fees.

Having carefully considered the matter, the court is of the opinion that plaintiff is entitled to summary judgment on its claims in all regards. Pursuant to defendant's admission, there is clearly no dispute about any of the material facts in this case; the only issue remaining,

the question of attorney's fees, is legal in nature and requires an interpretation of the language of the underlying promissory note. That document states in pertinent part:

If this note is not paid at maturity...and is placed in the hands of an attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof, Borrower...agree[s] to pay Bank a reasonable amount for attorney's fees, which is agreed to be an additional amount equal to fifteen percent (15%) of the unpaid principal and interest thereof but in no event to exceed the maximum amount permitted by law.

In this court's view, this language is sufficiently broad enough to encompass the situation at hand which is yet another "legal proceeding[] for collection" of the amount not paid at maturity. It is unreasonable for defendant to suggest that the entry of the final judgment in Texas terminated his obligation under the terms of this promissory note to pay attorney's fees for further collection efforts when it was his failure to satisfy the judgment which forced the filing of this action.

Plaintiff is therefore entitled to summary judgment in this matter and to an award of attorney's fees under the terms of the promissory note. Before closing, the court feels compelled to repeat the following advice from *Johnson v. Georgia Highway Express, Inc.* 488 F.2d 714 (5th Cir. 1974):

In cases of this kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees. Although a settlement generally leaves every litigant partially dissatisfied, so does a judicial award for attorney's fees.

Johnson, 488 F.2d at 720.

An appropriate order and final judgment shall issue.

This _____ day of May, 1998.

CHIEF JUDGE